IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 263 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARISHABHAI @ CHUNHO HANUMANBHAI KAHAR

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for the Petitioner.

MR MR PRAJAPATI for Petitioner No. 1

RULE SERVED for Respondent No. 1

Mr.A.Y. Kogje, Assistant GOVERNMENT PLEADER, for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 01/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner has challenged the detention order dated 22.12.2003, by which

he is detained as a `bootlegger' under the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). The petitioner is also served with the grounds of detention of the said date. In the grounds of detention, the authority has highlighted the activities undertaken by the petitioner. There is a reference about three registered cases against the petitioner. All these cases are under the Bombay Prohibition Act. The detaining authority has also recorded statement of two witnesses. The aforesaid detention order is challenged at the instance of the petitioner-detenu by way of this petition.

The learned Advocate for the petitioner submitted that after the incident in question, on the very next day, the detention order is passed and, therefore, according to him, it cannot be said that the authority has applied his mind appropriately by going through the entire record and it may amount to mechanical exercise of power.

Mr.Prajapati has argued that the statements were recorded on 18.12.2003 and 19.12.2003 and the verification is done by the detaining authority on 21.12.2003 and on the next date, i.e. on 22.12.2003, the detention order is passed. In this connection, the learned Advocate for the petitioner has relied on the decision of this Court in Ranubhai Bhikhabhai Bharwad v. State of Gujarat & Ors., XLI(3) GLR 2696. This Court observed in paragraph 9 as under :-

> " ... ...
>
> The statements of the three witnesses in the instant case which were recorded before the Police Inspector on 17th August 1999, 21st August 1999 and 25th August 1999 with regard to the incidents dated 10th July 1999, 13th June, 1999 and 26th June, 1999 were the material along with the proposal which is said to have been made on 27th August 1999 and it is clear from the record that it was on 29th August 1999 that the detaining authority has recorded its verification of all these three statements. There is nothing on record to show that the detaining authority had considered the proposal dated 27th August 1999 at any time prior to 29th August 1999 and on 29th August, 1999, all that has been done is that the concerned witnesses have stated

> before the detaining authority that the statements as had been made on the respective dates were correct and immediately thereafter on the following day, i.e. on 30th August 1999 the detention order has been passed.
>
> ... ..."

In this case, it is not in dispute that on the very next day, after verification of the statements, the detention order is passed by the Authority. In XLI(3) GLR 2696 (surpa), which is a similar type of case, where detention order was passed on the next date after verification of statement, this Court observed that the manner in which the verification has been recorded of the statements made by the witnesses for the purpose of Section 9(2) shows that the same has been done only as an empty formality in as much as, the same witnesses had been called before the detaining authority and the detaining authority had recorded that whatever the statements made by the witnesses were correct. The Court found that the whole exercise appears to have been done as a mechanical exercise and it is not borne out that there is an active application of mind on this aspect of the matter by the detaining authority for the purpose of verification of the facts as had been disclosed by the witnesses so as to express the fear and to invoke the privilege under Section 9(2) against the disclosure of the names and addresses of the witnesses.

Considering the aforesaid judgment of this Court in XLI(3) GLR 2696 (supra), and considering the facts of this case, wherein also statements were recorded on 18.19.2003 and 19.12.2003 and the verification is done by the detaining authority on 21.12.2003 and the detention order is passed on the very next day, i.e. on 22.12.2003, it an be presumed that the said exercise is not carried out properly and it may amount to mechanically relying on the statements, and only on this ground, the petition is required to be allowed.

The petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless he is required in connection with any other case. The Rule is made absolute accordingly.

July 1, 2004 (P.B. Majmudar, J.)

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(apj)